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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,764	11/25/2003	Stephane Bedard	16616/76234	4189
27148 7590 11/14/2008 POLSINELLI SHALTON FLANIGAN SUELTHAUS PC 700 W. 47TH STREET SUITE 1000 KANSAS CITY, MO 64112-1802				
EXAMINER				
WILLSE, DAVID H				
ART UNIT		PAPER NUMBER		
3738				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/721,764

Applicant(s)

BEDARD ET AL.

Examiner

David H. Willse

Art Unit

3738

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-11, 14-18 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11, 14-18, and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-11, 14-18, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, US 6,206,932 B1, which discloses a knee member **34** (Figure 2) or **602** (Figure 10); a socket connector assembly **26** or **604**; an elongated structural member connected to a prosthetic foot via a connector assembly (column 4, lines 3-12); a pivot assembly **50** or **606**; and a linear actuator **302** (Figure 5A; column 6, line 52 et seq.; column 9, lines 26-29) comprising a rotary motor **310**, a screw **316**, and a follower **306** (column 7, lines 2-10). The motor **310** is pivotally connected to the structural member via a hinge connection **304b**, and the follower **306** is pivotally connected to the knee member via hinge connection **304a**. Regarding the functional “whereby” clause at the end of instant claim 1, attention is directed to MPEP § 2106; moreover, interchanging male and female portions of the threaded coupling such that rotated element **316** moves “in or out of said follower” (present claim 1, second to last line) would have been an obvious mechanical design variation yielding predictable results quite similar to those obtained from the illustrated embodiment (of Figure 5A). Regarding the preamble of claim 1, the aforementioned embodiments are functionally *capable* of being used

with an above-knee amputation, whether or not such was the intent; additionally, the Johnson mechanisms can be specifically adapted for above-knee amputees (column 4, lines 15-21), with the actuator and structural member being at least indirectly pivotally connected to a *prosthetic* knee member. The further limitations of claims 3, 5, 6, and 11 would have been obvious in order to shield the actuator **302** and other movable parts from the shell cover **22** (Figure 1) and the external environment, with the detachable closure having been obvious in order to access the actuator and other components for maintenance or replacement. Regarding claims 7 and 8, an energy storage module and circuit board supported on the shell would have been obvious in order to render the system more portable, self-contained, and manageable for a physically impaired amputee. Regarding claims 15-18 and 23-25, a controller and sensors were well known in the art and would have obvious for the switching system of Johnson because such elements would provide for fine-tuning the adjustments in the same manner as the wheel **322**, verifying the orientation of the foot via proprioceptors and the like, and modifying the orientation via load sensors or optical sensors, with the ordinary practitioner having been motivated by the innate need to store orientation data corresponding to the various footwear of the amputee (column 1, lines 58-61; column 2, lines 6-12 and 63-67; etc.) and “to change the loading on the knee socket in such a way that it provides less irritation to areas on or around the residual limb” (column 2, lines 60-63; column 1, lines 20-27).

The Applicant's remarks have been considered. Because the Johnson alignment device is “readily manually adjustable by the wearer” (column 2, lines 6-7) and involves a simple depressing of a switch (column 6, lines 45-51 and 65-67), the rotary motor **310** is *capable* of being activated even during locomotion, whether or not such was the intent. In fact, an amputee

would reasonably have been expected to occasionally perform such a maneuver during ambulation so as to immediately ascertain the effects of such adjustments and fine tune the alignment, particularly in view of "the complexity of the adjustment process" (column 1, lines 61-65).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who is generally available Monday, Tuesday, and Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**/David H. Willse/
Primary Examiner
Art Unit 3738**